No. 80-1490

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

WILLIAM PETER WORKMAN, Petitioner

v.

STATE OF OREGON, Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF OREGON

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

No. _____

WILLIAM PETER WORKMAN, Petitioner

v.

STATE OF OREGON, Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF OREGON

The Petitioner WILLIAM PETER WORKMAN respectfully prays that a Writ of Certiorari issue to review the opinion of the Court of Appeals of the State of Oregon entered in this proceeding on August 25, 1980.

QUESTION PRESENTED

Whether a criminal defendant's constitutional right of confrontation demands

more than a discretionary review of a trial court's ruling on the relevance of proffered evidence?

OPINION BELOW

The Court of Appeals affirmed the judgment of the trial court through an Opinion dated August 25, 1980 and reported at 47 Or App 1055, ___P2d___ (1980) A copy of such Opinion is included in the Appendix.

JURISDICTION

The judgment of the Court of Appeals was entered on August 25, 1980. A timely Petition for Review was filed in the Supreme Court of the State of Oregon, such Petition being denied. A timely Petition for Rehearing was then filed, requesting the Supreme Court of the State of Oregon to reconsider its denial of the Petition for Review. Such Petition for Rehearing was denied on December 17, 1980, and this Petition for Writ of Certiorari

was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment VI to the Constitution of the United States:

> RIGHTS OF ACCUSED IN CRIMINAL PROSECUTIONS. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Amendment XIV to the Constitution of the United States, Section 1:

> CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the

> United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

NATURE OF THE ACTION.

In this criminal case the Petitioner was charged with Rape in the First Degree, a violation of Oregon Revised Statutes[1] (hereinafter referred to as ORS) 163.375. He was tried by a judge and jury and found guilty.

SUMMARY OF FACTS.

Sue Kiefel, 19 years of age, regularly worked the late shift at the United States National Bank in downtown Portland. She reported to her job at 3:30 in the afternoon and worked late into the night and sometimes the early hours of the

[1] ORS 163.375 is set forth in the Appendix at App-7.

morning. She often rode to and from her employment with a fellow worker, Theresa Scott. (Testimony of Theresa Scott, Tr at 71-72; Testimony of Sue Kiefel, Tr at 79-80)

On August 24, 1978 both Miss Scott and Miss Kiefel got off work about 10:30 p.m., and were going to go home in Miss Scott's car. However, when they came out of the bank they noticed a couple of young men in a dark van. The boys started yelling at them to come over, and, although Miss Scott declined, Miss Kiefel went over to talk. The Defendant was driving, and a friend was in the other seat in the cab area. They asked Sue if she knew where they could do some drinking, and she agreed to take them to a store to buy some beer if they would later take her home. She got in the vehicle and then noticed two more boys in the back section. (Testimony of Miss Kiefel, Tr at 82-83)

Miss Kiefel made good on her promise and took her companions to a nearby grocery store where they purchased a couple of six packs. The five of them drove around, drinking the beer and smoking some marijuana.[2] This lasted for 30 to 45 minutes, and then the van turned onto a bumpy gravel road and up a hill. The vehicle stopped in a dark area apparently unlit by neighboring signs or homes. Three of the boys got out, but the driver (Petitioner) stayed and began making advances toward Miss Kiefel -- attempting to kiss and pet her. She said she didn't do that with someone she'd first met, and he left the van.

The victim then testified that she was alone for about a minute, after which all four boys returned and announced they were going to have a "rodeo" -- each have his

[2] The victim admitted having two beers and one or two joints. (Testimony of Miss Kiefel, Tr at 111-112)

turn with her. They pushed her to the back of the van, held her down, took off her shoes and pants, and proceeded to have intercourse, two boys holding her wrists and arms while a third committed the sexual act. They told her she would be gagged if she didn't stop screaming, and threatened her with what she thought was a baseball bat. (Testimony of Miss Kiefel, Tr at 83-87, 89, 91-96, 98) Each of the young men had intercourse with Miss Kiefel, but denied the use of force.[3] (Testimony of Defendant, Tr at 247; Testimony of Mr. Hoover, Tr at 254)

[3] Two of the accused -- the Defendant and a Mr. Hoover, admitted the act, but denied the use of any force, and contended that Miss Kiefel consented.* The other two did not testify. (Testimony of Miss Kiefel, Tr at 83-87, 89, 91-96, 98; Testimony of Defendant, Tr at 247; Testimony of Mr. Hoover, Tr at 254)
*One Ronald Hopkins testified that Hoover admitted all four had raped the victim, and formulated a story to the contrary. (Testimony of Ronald Hopkins, Tr at 270-272)

The boys then left and Miss Kiefel walked from the hill to the road below, where she flagged a car. She was picked up by Eva Wardin, who, after hearing Miss Kiefel's story of the alleged rape, suggested[4] that she report it to the police.

Although Susan looked upset and had tears in her eyes, her clothes were not disheveled and she had calmed down significantly by the time she reached the police station. The police took her to Dwyer Hospital for examination. The doctor found evidence of slight genital swelling, consistent with intercourse, but no bleeding, bruises, lacerations, or particular tenderness in the pelvic area. There was no indication of external injury except for a slight irritation on Miss Kiefel's left wrist.

[4] Miss Kiefel had not initially wanted to go to either the police or the hospital, but rather to return home. (Testimony of Mrs. Wardin, Tr at 189; Testimony of Miss Kiefel, Tr at 149)

Both the State and defense doctor essentially agreed that the absence of injury in the vaginal area is generally, but not necessarily, inconsistent with forcible intercourse. One reason is that unless a woman's natural lubrication is present, there will normally be some tearing after sexual penetration. This lubrication is only witnessed when the female is sexually aroused, and such arousal is certainly inconsistent with forcible intercourse. (Testimony of Miss Kiefel, Tr at 102-104, 118-119, 149; Testimony of Dr. Perlman, Tr at 156, 158, 159-161, 164-165; Testimony of Dr. Dinsmore, Tr at 167-171; Testimony of Mrs. Wardin, Tr at 175-178, 189) Despite such evidence, the Petitioner was convicted.

PRESENTATION OF FEDERAL QUESTION

Pursuant to ORS 163.475[5] Defendant requested a pretrial in camera hearing to

[5] ORS 163.475 is set forth in the Appendix at App-9, App-10.

determine the admissibility of evidence of the prosecutrix's sexual habits and behavior. She testified that on one occasion, June 19, 1979, she had had a party in her apartment and had been drinking beer and smoking marijuana. Five men remained in her apartment overnight on that occasion, although Miss Kiefel admitted having sexual relations with only one. She also stayed overnight with two men on August 8-9 of 1979, although once again admitted to intercourse with only one. On the night of August 16-17, 1979, she again spent the night with two men, but denied having sex with either. Finally, she lived with two men for a period of some three months, but only testified to sleeping with one.[6] In addition, she admitted to

[6] The specific individuals were:
June 19: Mr. Remell, Mr. Gray, Mr. Pruitt, Keith & Cary;
August 8-9: Greg Pratt, Keith Kokovudo;
August 18-19: Louis Johnson, Richard Arthur
Three month period: Greg Pratt, Cary --
It is interesting that Greg was the "boyfriend" who the prosecutrix

being sexually active since her freshman year in high school. (Testimony of Miss Kiefel, Tr at 22-24, 27-28, 29, 31-35).

Petitioner felt such evidence was relevant to his case, and that a ruling of inadmissibility would be at odds with his constitutional right of confrontation. Specifically, counsel raised the issue as follows:

MR. BURT: Because it is the theory of the defense that she voluntarily went with and had relations with four men at one time. In fact it's that unusual situation that makes it admissible that this woman has a habit of spending the night with multiple male persons.

THE COURT: Well, I'm going to rule that that testimony is inadmissible at this time. I will instruct counsel not to mention it during voir dire examination nor in opening statements. And then at the time of your cross-examination of the complaining witness, if you think that a further record

6 (Cont'd)
generally admitted to sleeping with, but when he left the home she remained with Cary, her "man friend" as opposed to her "boyfriend."

should be made, we will have an in camera hearing again at that time. And then if you want to make an offer or proof as part of your case with these other witnesses, you go ahead.

But I don't think, Mr. Burt, what you have is 163.475. If you brought forth witnesses, each of whom said she voluntarily met them or they all had sex, I might rule different. So far you have got her at a party sleeping with her boyfriend and there are other males there. The fact that she might have drank some beer and smoked some marijuana and then you added cocaine, I think all that does is blacken her as a person. (Tr 54, Lines 16-25; Tr 55, Lines 1-13)

MR. BURT: Our problem with this, Your Honor, I think maybe we might as well make the record now. We contend that this entire section, 163.475 is unconstitutional for two reasons. It prevents a criminal defendant in a rape case from confronting his witnesses. He is arbitrarily limited against showing both her sexual disposition, which the statute uses, and her prior sexual acts. This is a deprivation of his right to confront the witness since that is the very guts of a rape case. Did she consent or not? And the fact that she has consented many times before, in

> our opinion, is also, and should be relevant in a rape case. (Tr 55, Lines 21-25; Tr 56, Lines 1-8)

THE COURT: ... But in any event, the fact she had been at parties before and slept with her boyfriend, which is the only evidence before me, is not relevant and I have so ruled. And that that prior sexual conduct when she was a freshman in high school, she had sex with this boy eight times and then when she was a sophomore she had sex with somebody fifteen times and she was celibate during her junior and senior year and since then she has been twenty-five times with Craig Johnson or Gregg, whoever it is. I don't think those are admissible to show any, according to the statute, motive or bias. (Tr 57, Lines 8-18)

This constitutional question was then advanced in the Oregon Court of Appeals through appropriate Assignment of Error.

REASONS FOR GRANTING THE WRIT

The Decision below, and the Trial Judge's ruling on admissibility of the prosecutrix's sexual reputation, affords unnecessary protection to the alleged

victim and violates the Petitioner's confrontation rights. In such situations, the trial court should not be granted wide discretion to deny the introduction of evidence, but should instead be guided by better defined parameters which allow admission of evidence that is marginally relevant. This court has not addressed the impact of the confrontation clause toward liberalizing the initial admission of evidence favorable to a criminal accused, as opposed to allowing a broad scope of cross-examination.

The Sixth Amendment right of confrontation has been most often discussed in terms of appropriate limits of cross-examination, and its conflict with traditional rules of evidence, especially as they relate to hearsay exceptions. (Dutton v. Evans, 400 U S 74, 79, 81-82, 91 S Ct 210, 27 L Ed 2d 213 (1970); California v. Green, 399 U S 149, 155-156, 90 S Ct 1930,

26 L Ed 2d 489 (1970); Alford v. United States, 282 U S 687, 694, 51 S Ct 218, 75 L Ed 624 (1931)) Little has been mentioned with regard to an expansion of the initial admissibility of evidence to logically follow the close scrutiny which the clause demands in areas of hearsay. Indeed, a criminal defendant's right to confront witnesses by contrary evidence is certainly as important as his opportunity for cross-examination. Yet the latter has received all constitutional attention, while general evidentiary questions have been left to the broad discretion of the trial judge. This Petitioner, and others accused of criminal conduct, especially rape, are entitled to more far-reaching protection. In particular, a rape defendant's right to confrontation, when read in light of current "rape shield" laws, as enacted in Oregon, should expand, rather than limit the admissibility of a prosecutrix's sexual habits. An overview

of Oregon's evidentiary rules is indicative of national trends, and supportive of Petitioner's contention.

Past authorities found that a prosecutrix's reputation for chastity was relevant to the issue of consent, as was her prior association with the Defendant. (State v. Eggleston, 31 Or App 9, 569 P2d 1088 (1977); State v. Ogden, 39 Or 195, 207-211, 65 P 444 (1901); See also The Rape Victim: A Victim of Society and the Law, Will. L.J. 36, 39, 41-42 (1974)) However, evidence of particular illicit acts with persons other than Defendant was generally not allowed, at least in part on the theory that while the Defendant may be

> ... expected to defend her general reputation for chastity, she cannot anticipate the charges of specific acts of illicit intercourse which may be made by men who perhaps have been suborned to testify that they have had such connection with her, ... (Ogden, supra, at 210)

However, the distinction between character

for chastity and specific acts is not clear cut, and the latter was frequently allowed as evidence of the former. (See Am Jur 2d, Rape, § 83, at 810-811; State v. Lantz, 44 Or App 695, 703, ____P2d _____(1980)) The result was often a trial of the victim rather than the defendant, with all the accompanying embarrassment and resultant reluctance to carry through with the prosecution.

Protection of the victim became of paramount importance, as reflected in somewhat widespread passage of "rape shield" laws, including ORS 163.475. (See State v. Eggleston, supra.) The initial version of this statute[7] prohibited any evidence of a rape victim's sexual character or reputation, and similarly precluded testimony concerning her prior sexual contacts, except with the Defendant. However, this

7 Original ORS 163.475 is contained in the Appendix at App-8, App-9.

strict prohibition came in conflict with a Defendant's Constitutional right to confrontation[8] when the historical evidence concerning the prosecutrix was indeed relevant. When such competing interests collided, the legislative efforts to protect the victim had to necessarily fall before the constitutionally guaranteed rights of the accused. (See Davis v. Alaska, 415 U S 308, 94 S Ct 1103, 39 L 2d 2d 347; State v. Jalo, 27 Or App 845, 850-851, 557 P2d 1359 (1976))

After Jalo, pertinent Oregon law (ORS 163.475) was amended to allow an in camera hearing to determine if a rape victim's previous sexual conduct, with either the Defendant or others, would be admitted at trial. Such evidence carried

[8] Article I, Section 11 of the Constitution of the State of Oregon; Amendments VI and XIV of the United States Constitution.

particular relevance if it concerned motive or bias, or might rebut scientific or medical evidence offered by the State. (ORS 163.475(5))[9] The permissible bounds of this type of inquiry have also encompassed evidence to impeach testimony that the victim was supposedly ashamed by the sexual act, and therefore delayed reporting it. (State v. Lantz, supra) The countervailing policies of protecting the victim and insuring the Defendant's constitutional rights has finally evolved into a balancing act requiring the Defendant to "... demonstrate that the proffered evidence is relevant and has substantial probative value in establishing or rebutting a material issue in the trial." (State v. Lantz, supra, 44 Or App, at 702)

But how should this question of admissibility be resolved by the trial judge

[9] Current ORS 163.475 is set forth in the Appendix at App-9, App-10.

and reviewed by the appellate courts?

The Oregon Court of Appeals ruled that all such questions of admissibility are matters for the trial court's discretion, and will not be grounds for reversal absent its abuse. (Opinion of Court of Appeals at 3, citing State v. Chase, 47 Or App 175, ____ P2d ____(1980)) However, this most recent promulgation overlooked the constitutional issue when it stated that in determining the admissibility of sexual evidence,

> ... the court must balance the probative value of the evidence against the prejudicial impact such evidence is likely to have on the minds of jurors and the humiliating effect on complainant, which the statute manifestly seeks to prevent. (Opinion, at 2, citing State v. Lantz, 44 Or App 695, 607 P2d 197 (1980))

In fact, the trial court must balance the probative weight of the evidence against not only the interests of the victim, but, more importantly, the constitutional rights of the accused. When the rights of the

prosecutrix and defendant then collide, this conflict must necessarily be decided in favor of liberal rights of confrontation. (See State v. Lantz, 44 Or App 695, 702, 607 P2d 197 (1980); State v. Jalo, 27 Or App 845, 850-851, 557 P2d 1359 (1976); Davis v. Alaska, 415 U S 308, 94 S Ct 1103, 93 L Ed 2d 347 (1974))

The preeminence of an accused's right to confrontation implies that something more than mere discretion is required of a trial court. Indeed, although the courts continue to generally speak only in such terms, the opinions certainly ask closer scrutiny when constitutional rights are involved. Thus, interests competing with the right of confrontation are to be "closely examined"[10], and a trial court's dis-

[10] Chambers v. Mississippi, 400 U S 284, 93 S Ct 1038, 35 L Ed 2d 297 states at 295:
"...(t)he right to confront and cross-examine is not absolute and may, in appropriate cases, bow to accommodate

cretion must give "due regard"[11] to the right of confrontation before excluding evidence that is even "minimally relevant."[12] A less stringent evidentiary test is certainly appropriate, for without such increased admissibility, the accused's con-

10 (Cont'd)
other legitimate interests in the criminal trial process... But its denial or significant dimunition calls into question the ultimate 'integrity of the fact-finding process' and requires that the competing interest be closely examined." (Emphasis added)

11
United States v. Crumley, 565 F 2d 945 (5th Cir, 1978) states at 949:
"A trial court's sound discretion limits the scope and extent of cross-examination and appellate court will only interfere with that ruling absent an abuse of discretion. However, this discretion must give due regard to the Sixth Amendment's Right of Confrontation." (Emphasis added)

12
United States v. Kizer, 569 F 2d 504 (9th Cir, 1978) states at 505:
"It is established, however, that cross-examination may be limited where the Sixth Amendment interest is outweighed by the danger of harrassing witnesses or unduly prejudicing the jury.... The proper extent of cross-examination lies within the sound discretion of the trial court.... The trial court may limit or even prohibit a proffered line of inquiry that is minimally relevant." (Emphasis added)

stitutional rights carry no additional weight.

CONCLUSION

Neither the Oregon Court of Appeals nor the trial judge properly considered the Defendant's constitutional rights when deciding the evidentiary questions pertinent to this case. The test applied should not defer so totally to the trial court's discretion without first insuring that every step has been taken to guarantee proper confrontation. In rape cases the balancing of interests must include those insured by the constitution, and affording protection to the accused. For these reasons, a Writ of Certiorari should issue to review the Judgment and Opinion of the Court of Appeals of the State of Oregon.

Respectfully submitted,

BROWN, BURT, SWANSON & LATHEN

By: J. MICHAEL ALEXANDER
Of Attorneys for Petitioner

APPENDIX

ACTION BY COURT OF APPEALS

IN THE COURT OF APPEALS OF THE STATE OF OREGON

State of Oregon,

Respondent, No. 79-4-248
CA 16664

v.

William Peter Workman,

Appellant

Appeal from Circuit Court,
Clackamas County

Dale Jacobs, Judge

Argued and submitted July 28, 1980

J. Michael Alexander, Salem, argued the cause for appellant. With him on the brief was Brown, Burt, Swanson & Lathen, Salem.

Jan P. Londahl, Assistant Attorney General, Salem, argued the cause for respondent. With him on the brief were James M. Brown, Attorney General, and Walter L. Barrie, Solicitor General, Salem.

Before Richardson, Presiding Judge, and Thornton and Buttler, Judges.

THORNTON, J.

Affirmed.

FILED August 25, 1980

THORNTON, J.

Defendant appeals from his conviction on the charge of first degree rape. He assigns as error the exclusion of certain testimony alleged to be evidence of the sexual conduct of complainant. We affirm.

The incident from which the criminal charge against this defendant stems occurred on August 24, 1978. Complainant was allegedly picked up and raped by four young men, one of whom was identified as defendant. Defendant admitted the act of intercourse but contended that no forcible compulsion was employed. ORS 163.375(1)(a).

During the in camera pretrial hearing held pursuant to ORS 163.475(4), complainant testified, in response to questions by defendant's attorney, that on three occasions during the summer of the year following the incident, 1979, she had spent the night in dwellings which were simultaneously occupied by several young men. On two of these occasions complainant stated she spent the night with her boyfriend. As to the third instance, she admitted that she stayed in a house with two men, one of whom was a good friend who had lived for some period of time with her boyfriend, but she denied having any sexual relations with either of them. Defendant offered to rebut complainant's testimony with respect to the number and identities of the persons who slept in the same dwelling as complainant but admitted that no witness would testify to any specific act of sexual relations.

The trial court held the proffered evidence irrelevant. ORS 163.475(2) prohibits the use in any trial of a sexual offense of evidence to prove complainant's sexual character and reputation and the

statute further provides:

> "(3) Except as provided in subsection (4) of this section, in a prosecution under ORS 163.355 to 163.425, evidence of previous sexual conduct of a complainant is presumed to be irrelevant and shall not be admitted and reference to that conduct whall not be made in the presence of the jury. This presumption may be overcome.
>
> "(4) * * * If the court finds that the evidence or testimony sought by the defendant regarding the previous sexual conduct of complainant is relevant for the purpose offered and is not otherwise inadmissible, the court shall issue an order stating what evidence may be introduced by the defendant, and the nature of the questions permitted at trial."

In determining whether the presumption is overcome, the court must balance the probative value of the evidence against the prejudicial impact such evidence is likely to have on the minds of jurors and the humiliating effect on complainant, which the statute manifestly seeks to prevent. State v. Lantz, 44 Or App 895, 607 P2d 197 (1980). Defendant contends the proffered evidence is relevant to show a pattern of behavior on complainant's part which demonstrates a proclivity for engaging in sexual relations with more than one man at a time. This defendant further asserts, adds strength to his argument that complainant consented to the act in question. The state argues that the evidence is defective on several grounds: (1) the incidents at issue here

are not "previous sexual conduct" inasmuch as they occurred nearly a year after the incident; (2) the incidents are not evidence of sexual conduct; and (3) the evidence is ultimately irrelevant.

In State v. Chase, 47 Or App 173, ___ P2d ___ (1980), we held that determinations under ORS 163.475(4) are similar to other admissibility rulings and are subject to reversal only where the trial court abused its discretion.

The evidence here is of no probative value. It is evidence of conduct, but not sexual conduct. It established only that complainant had an opportunity to engage in the type of conduct which defendant seeks to distill from the victim's testimony. State v. Goguen, 196 Or 586, 592, 250 P2d 924 (1952) (evidence that complainant read "sexy literature" and went with members of both sexes on car rides during which "embracing" occurred not admissible on issue of consent). The inference which must be drawn to render these incidents evidence of sexual conduct is tenuous at best. It is contrary to the assertions of complainant and the defense admitted it had no actual evidence of sexual activities. Further, the inference in question must be drawn, if at all, by operation of prejudice, namely, that a woman who would spend the night in the same dwelling as four men would do so for the purpose of engaging in sexual activities with them. We conclude that the evidence was properly excluded.

Affirmed.

November 21, 1980

J. Michael Alexander
Attorney at Law
1005 Capitol Tower
Salem, OR 97301

Re: State v. William Peter Workman
CA 16664 SC 27320

Dear Mr. Alexander:

The Supreme Court on November 20, 1980, denied Appellant's Petition for Review in the above-entitled matter.

This letter constitutes the order of the Supreme Court denying the petition.

Very truly yours,

Marilyn Hartley
Supreme Court
Calendar Clerk

MH/vr
cc: Jan P. Londahl

December 17, 1980

J. Michael Alexander
Attorney at Law
1005 Capitol Tower
Salem, OR 97301

Re: State v. William Peter Workman
CA 16664 SC 27320

Dear Mr. Alexander:

The Supreme Court on December 16, 1980, denied Appellant's Petition for Reconsideration in the above-entitled matter.

This letter constitutes the order of the Supreme Court denying the petition.

Very truly yours,

Marilyn Hartley
Supreme Court
Calendar Clerk

MH/vr
cc: Jan Peter Londahl

ORS 163.375. RAPE IN THE FIRST DEGREE.
(1) A person who has sexual intercourse with a female commits the crime of rape in the first degree if:
(a) The female is subjected to forcible compulsion by the male; or
(b) The female is under 12 years of age; or
(c) The female is under 16 years of age and is the male's sister, of the whole or half blood, his daughter or his wife's daughter.
(2) Rape in the first degree is a Class A felony.

Original ORS 163.475 reads as follows: ADMISSIBILITY OF EVIDENCE OF SEXUAL CHARACTER IN PROSECUTIONS UNDER ORS 163.355 to 163.425' "COMPLAINANT" DEFINED; RIGHT TO IMPEACH WITNESSES UNAFFECTED. (1) For the purposes of this section, "complainant" means the alleged victim of the crime for which the defendant is prosecuted. (2) In a prosecution under ORS 163.355 to 163.425, evidence of the sexual character or reputation for chastity of the complaintant is not admissible for any purpose, and reference to the sexual character or reputation for chastity of the complainant shall not be made in the presence of the jury. (3) Except as provided in subsection (4) of this section, in a prosecution under ORS 163.355 to 163.425, evidence of previous sexual conduct of complainant shall not be admitted and reference to that conduct shall not be made in the presence of the jury. (4) If a defendant wishes to elicit evidence or testimony concerning previous sexual conduct between himself and the complainant for the purpose of negating the existence of forcible compulsion in the alleged offense, the defendant must, during the trial, but prior to the offering of such evidence or making reference thereof, request a hearing to be held to determine whether the evidence will be admitted. The court shall conduct a hearing out of the presence of the jury and shall take such testimony and evidence as it deems necessary. If the Court finds that the evidence or testimony sought by the defendant regarding the previous sexual conduct of complainant with the defendant is relevant for the purpose offered and is not otherwise inadmissible, the court shall issue an

Original ORS 163.475 (cont'd)

order stating what evidence may be introduced by the defendant, and the nature of the questions permitted at trial. (5) Nothing in this section shall limit the right of either the State or the defendant to impeach the credibility of a witness by proof of a prior conviction of a crime.

Current ORS 163.475 reads in its entirety as follows:

ADMISSIBILITY OF EVIDENCE OF SEXUAL CHARACTER IN PROSECUTIONS UNDER ORS 163.355 to 163.425; "COMPLAINANT" DEFINED; RIGHT TO IMPEACH WITNESSES UNAFFECTED; OTHER RELEVANT EVIDENCE. (1) For the purposes of this section, "complainant" means the alleged victim of a crime for which the defendant is prosecuted. (2) In a prosecution under ORS 163.355 to 163.425, evidence of the sexual character or sexual reputation of the complainant shall not be made in the presence of the jury. (3) Except as provided in subsection (4) of this section, in a prosecution under ORS 163.355 to 163.425, evidence of previous sexual conduct of a complainant is presumed to be irrelevant and shall not be admitted and reference to that conduct shall not be made in the presence of the jury. This presumption may be overcome. (4) If a defendant wishes to elicit evidence or testimony concerning previous sexual conduct of the complainant, the defendant must, prior to the offering of such evidence or making reference thereto, request a hearing to be held to determine whether the evidence will be admitted. The request for a hearing shall be made

Current ORS 163.475 (Cont'd)

prior to the trial unless for good cause shown. Good cause shall be deemed to exist if the defendant shows that the evidence he wishes to offer was not reasonably available to him prior to trial. The Court shall conduct a hearing out of the presence of the jury and the public and shall take such testimony and evidence as it deems necessary. If the court finds that the evidence or testimony sought by the defendant regarding the previous sexual conduct of complainant is relevant for the purpose offered and is not otherwise inadmissible, the court shall issue an order stating what evidence may be introduced by the defendant, and the nature of the questions permitted at trial. (5) Evidence of the complaint's sexual conduct that may be considered relevant includes, but is not limited to: (a) Evidence that relates to the motive or bias of the complainant; or (b) Evidence that is necessary to rebut or explain scientific or medical evidence offered by the State. (6) Nothing in this section shall limit the right of either the state or the defendant to impeach the credibility of a witness by proof of a prior conviction of a crime.